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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, NW
Washington, D.C. 20536

[redacted]

OCT 20 2003

FILE: WAC 02 157 53752 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a beauty shop and cosmetics training center. It seeks classification of the beneficiary as a trainee. The director determined that the evidence does not show a structured training program with detail as to the duties and phases of training.

Counsel submitted a Notice of Appeal on November 29, 2002, requesting 60 days in order to submit a brief. To date, no brief has been received. With the Notice of Appeal, however, counsel states that the director erred in his decision and that all of the reasons the director gave for denial have been complied with and/or explained.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii), provides classification for an alien having a residence in a foreign country, which he or she has no intention of abandoning, who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. § 214.2(h)(7) states, in pertinent part:

> (ii) Evidence required for petition involving alien trainee--(A) Conditions. The petitioner is required to demonstrate that:
>
> (1) The proposed training is not available in the alien's own country;
>
> (2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;
>
> (3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and
>
> (4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) Description of training program. Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit, which will accrue to the petitioner for providing the training.

(iii) Restrictions on training program for alien trainee. A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

> (G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or
>
> (H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The record, as it is presently constituted, contains: brochures about the petitioner's company; photographs of the salon and training center; various business licenses and corporate documents; a five-day, eight hours per day class schedule for airbrushing; and, materials about the Microsistems Education Program (a permanent make-up training) and a class schedule indicating two and three-day trainings for each of three levels of that training.

The director determined:

> The evidence of record does not show a structured training program, such as a description of exact duties to be performed by the beneficiary, an outline of the training program showing exact periods of each phase of training, amount of academic instruction and time to be spent in 'on-the-job training' and amount of productive labor to be performed by the beneficiary during training.

Counsel did not file a brief, but he did submit a short letter with the Notice of Appeal, although it did not specifically address this issue. Instead, it stated that he believed the original petition had been lost due to the nature of the questions asked in the director's request for evidence. Counsel also stated that the petitioner has complied with, and/or explained all of the issues raised in the denial.

In reviewing an attachment submitted with the original petition, the petitioner describes the training program for the airbrush makeup segment as being three days per week, six hours per day for a total of 45 hours of instruction. In addition, there are 30 hours of hands-on training required. The petitioner states, "[D]epending on the progress of the student [the training] could take as long as three months to complete." In describing the training for permanent makeup, the petitioner states that there will be eight days of instruction, covering all three levels:

> Each session in the Permanent Makeup training program could take several months to complete given the progress of the student and the satisfactory completion of the student's homework, prior to progressing to the next level. The student will also be completing a vigorous training program in the 'Bridal Beauty Artistry' arena. This training program involves 200 hours of instruction. Included within this instruction is the training for the 'Airbrush Makeup' program. Students are trained 3 days a week, 6 hours per day. The course involves a complete program on bridal makeup, including Airbrush Makeup, hair design and skin care. Upon satisfactory completion of the 200 hours of training, each student is then required to complete 100 hours of hands-on-training [sic] carried out each Saturday at 4 hours per day. The program length, depending upon the progress and attendance of the students usually completes within 12-14 months.

The only fixed schedule supplied by the petitioner is for the five-day airbrush makeup program, and even that varies between the narrative above (stating that training is six hours per day) and the chart breaking the program down, with training scheduled for eight hours per day.

The materials from Microsistems state the topics covered by each day of training for permanent makeup, but provide no breakdown of how long is spent on each topic, nor how long is spent in class each day. The petitioner does not make clear how the ensuing two to three months of training would be spent following the several days in each level of training. In addition, there is no evidence submitted beyond the petitioner's statement above regarding the components of the 'Bridal Beauty Artistry' training.

The regulations state, "A training program may not be approved which [d]eals in generalities with no fixed schedule, objectives, or means of evaluation." 8 C.F.R. § 214.2(h)(7)(iii)(A). Clearly, the petitioner's proposed training deals in generalities and has no fixed schedule, and therefore cannot be approved.

Beyond the decision of the director, the petitioner has not established that the training will benefit the beneficiary in establishing a career outside the United States. Counsel and the petitioner state that there is a great demand for these services in Japan, and that the petitioner and the beneficiary plan to open a joint venture salon in Japan, but no evidence has been provided to establish either assertion. Simply going on record without

supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In nonimmigrant visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.